



July 2, 2011

Via electronic mail

California Citizens Redistricting Commission
901 P Street, Suite 154-A
Sacramento, CA 95814

RE: Population Equality Standard Applicable to State Legislative Districts

Dear Members of the Citizens Redistricting Commission:

On behalf of the Asian Pacific American Legal Center (APALC), I write to provide information that I hope will clarify the Commission's understanding of the population equality standard applicable to the redrawing of California legislative districts.

Background

We recently became aware that on May 27, 2011, the Commission passed a motion pertaining to permissible levels of population deviation in the Commission's final plans for state legislative districts.¹ Specifically, we understand that the Commission passed a motion that its line-drawers be instructed to strive for zero deviation from ideal population, and when ideal population cannot be achieved, to draw districts not exceeding a 1% limit on total deviation.²

We understand that the standard set forth in the Commission's motion is not a limit pertaining to any particular district. In other words, the standard set forth in the motion is not a limit that each state legislative district must be within plus or minus 1% deviation from the ideal size.

Rather, we understand that the Commission's motion specifies a 1% limit on the total deviation of its overall plans. Specifically, we understand that the term "total deviation" as used by the Commission means the sum of (1) the deviation of the most populated district in a plan and (2) the deviation of the least populated district in a plan.

In concrete terms, this 1% limit on total deviation means that if, for example, the most underpopulated district in the Commission's Assembly plan is 0.8% below the ideal size, then the most overpopulated Assembly district cannot be more than 0.2% above the ideal size. As another example, if the most underpopulated district in the plan is 0.3% below the ideal size, then the most overpopulated district cannot be more than 0.7% above the ideal size.

¹ We note that the transcript of this meeting was unavailable as of the date of this letter, and we are unaware of any meeting summary having been issued for the meeting.

² See video archive of Commission's May 27, 2011 business meeting, available at <http://wedrawthelines.ca.gov/video-archive-may-27-2011-northridge.html> (third video clip from top at around 15:00 minute mark).

Inconsistency Between Commission's Deviation Limit and the Population Equality Standard Established in California Supreme Court Decisions

We understand that by adopting this motion, the Commission intends to draw state legislative districts which adhere to the population equality standard used in past redistrictings and articulated in California Supreme Court decisions such as *Legislature v. Reinecke*, 10 Cal.3d 396 (1973), and *Wilson v. Eu*, 1 Cal.4th 707 (1992). However, the 1% limit on total deviation set forth in the Commission's motion is actually inconsistent with, and much narrower than, the standard articulated in those decisions. The standard articulated in those decisions pertains to the deviation of individual districts, rather than the total deviation of an overall plan.

In *Legislature v. Reinecke*, the California Supreme Court appointed special masters to redraw legislative and congressional districts after the legislature and Governor deadlocked on the post-1970 census redistricting. The special masters established, and the Court approved, a limit that, "The population of senate and assembly districts should be within 1 percent of the ideal except in unusual circumstances, and in no event should a deviation greater than 2 percent be permitted."³

In the Assembly plan drawn by the special masters and approved by the Court, the most overpopulated district had a deviation of 1.94% over ideal size (AD 1), and the most underpopulated district had a deviation of 1.90% under ideal size (AD 29). The total deviation of the Assembly plan was 3.84%. In the special masters' Senate plan, the most overpopulated district had a deviation of 1.92% over ideal size (SD 1), and the most underpopulated district had a deviation of 1.02% under ideal size (SD 18). The total deviation of the Senate plan was 2.94%.⁴

Given these deviation figures, it is unmistakably clear that *Reinecke*'s deviation limit of 1% and in no event greater than 2% is a limit on the deviation of any given district, rather than a limit on the total deviation of a plan. In other words, the standard set forth in *Reinecke* is a limit of plus or minus 1%, and in no event greater than plus or minus 2%.

In *Wilson v. Eu*, the California Supreme Court again appointed special masters to redraw districts after the legislature and Governor deadlocked on the post-1990 census redistricting. The special masters followed the same standard which was approved by the *Reinecke* court in 1973 and which was left unchanged after amendments to the California Constitution in 1980.⁵

In the Assembly plan drawn by the special masters, the most overpopulated district had a deviation of 0.95% over ideal size (AD 17), and the most underpopulated district had a deviation of 0.85% under ideal size (AD 27). The total deviation of the Assembly plan was 1.80%. In the Senate plan, the most overpopulated district had a deviation of 0.93% over ideal size (SD 5), and

³ *Reinecke* at 411.

⁴ See Appendix B to special masters' report, *Reinecke* at 447.

⁵ See 1981 opinion of California Attorney General providing guidance on state redistricting criteria in light of amendments to California Constitution passed by voters in 1980, 64 Ops.Cal.Atty.Gen. 597, 613-615 (1981).

the most underpopulated district had a deviation of 0.74% under ideal size (SD 28). The total deviation of the Senate plan was 1.67%.⁶

These deviation figures again make clear that the limit of 1% and in no event greater than 2% initially established in *Reinecke* is a limit on the deviation of any given district, rather than a limit on the total deviation of a plan. The text of the special masters' report also makes this clear:

V. Plans Recommendation for Adoption

A. Assembly Plan

1. In General

Every assembly district in the state consists of entire census tracts and *each* district varies by less than 1 percent from the ideal size of 372,000 persons.”

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. .
.

B. Senate Plan

1. In General

Every senate district in the state consists of entire census tracts and *each* district varies by less than one percent from the ideal size of 744,000 persons.”

Wilson at 770 and 782 (emphasis added).

Consequences of Commission's Deviation Limit

In sum, the motion passed by the Commission on May 27 is inconsistent with the population equality standard articulated in the *Reinecke* and *Wilson* cases. The motion passed by the Commission establishes a 1% limit on total deviation, whereas the standard articulated in *Reinecke* and *Wilson* specifies a 1% limit on the deviation of any given district.

In so doing, the motion establishes a standard that will be difficult to implement in practice: Any time the Commission directs its line-drawers to add population to the most overpopulated district in the draft plan, the line-drawers must check to see whether they must also add population to the most underpopulated district in order to stay within the 1% limit on total deviation. Conversely, when the Commission's line-drawers subtract population from the most underpopulated district, they must check to see whether they must also subtract population from the most overpopulated district. It seems to us that the Commission's line-drawers could more efficiently carry out the Commission's mapping instructions if they did not have to consider changes to overpopulated districts in relation to underpopulated districts or vice versa. The Commission's line-drawers already must deal with sequential ripple effects arising from changes to any particular district; a

⁶ See Appendix Two to special masters' report, *Wilson* at 798.

1% limit on total deviation could require the Commission's line-drawers to deal with a second set of domino effects.

In addition to being inconsistent with the population equality standard previously approved by the California Supreme Court, the Commission's motion significantly narrows such standard. As noted above, a 1% limit on the total deviation of the Commission's legislative plans means that legislative districts can have a deviation range of no more than minus 0.2% and plus 0.8%, or minus 0.5% and plus 0.5%, or minus 0.7% and plus 0.3%, etc. Any of these and similar deviation spreads represent a substantially narrower limit than the limit approved in *Reinecke* and *Wilson* of plus or minus 1% and in no event greater than 2%.

The consequence of narrowing the permissible limit on deviation of legislative districts is to reduce the ability of the Commission's line-drawers to preserve the geographic integrity of cities, counties, neighborhoods, and communities of interest. The Commission's legislative plans will likely have a greater number of splits of cities, counties, neighborhoods and communities of interest than would occur with a plus or minus 1% limit. A narrower limit is also likely to pose barriers to the Commission's ability to comply with the Voting Rights Act in areas where the Commission finds evidence of racially polarized voting, by making it more difficult for the Commission to draw districts in which geographically compact minority populations constitute a majority of a district.

* * * * *

For the reasons stated above, we ask the Commission to revisit the motion passed on May 27 and consider adopting a population equality standard that is consistent with the standard used in past California redistrictings, which is that, "The population of senate and assembly districts should be within 1 percent of the ideal except in unusual circumstances, and in no event should a deviation greater than 2 percent be permitted."⁷

While we ask the Commission to consider establishing a population equality standard that is consistent with the standard articulated in California Supreme Court decisions of plus or minus 1% and in no event greater than 2%, we do not concede that the U.S. or California Constitutions necessarily limit California legislative districts to such deviations, in light of new language added to the California Constitution by the Voters First Act that, "districts shall have reasonably equal population with other districts for the same office, *except where deviation is required to comply with the federal Voting Rights Act or allowable by law*" (new language in italics). Cal. Const. Art. XXI, sec. 2(d)(1). We believe that under commonly followed rules of statutory interpretation, the Commission should interpret this new language and give effect to it, and we further believe that this new language could be interpreted to authorize deviations exceeding a limit of plus or minus 1% and in no event greater than 2% where necessary and appropriate.

⁷ *Reinecke* at 411.

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Thank you for your consideration of our comments. As is always our intent, we offer our comments with the hope of providing information that the Commission may find useful as it carries out its responsibilities. If you or your staff or counsel have any questions pertaining to the content of this letter, or if we can be of further assistance in any aspect of your work, please do not hesitate to let us know.

Sincerely,

A handwritten signature in black ink that reads "Eugene P. Lee". The signature is fluid and cursive, with the first name "Eugene" being the most prominent part.

Eugene Lee
Voting Rights Project Director